

## Message Text

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C O N F I D E N T I A L STATE 145568

E.O. 11652: GDS

TAGS: SHUM

SUBJECT:DRAFT HUMAN RIGHTS PLAN FOR KENYA

REF: STATE 139160

1. DEPARTMENT WOULD APPRECIATE EMBASSY COMMENTS ON  
FOLLOWING DRAFT COUNTRY PLAN BY JUNE 28, PER REFTEL.  
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### A. HUMAN RIGHTS CONDITIONS

KENYA'S HUMAN RIGHTS RECORD, WHILE NOT UNBLEMISHED, IS  
AMONG THE STRONGER IN AFRICA. ALTHOUGH KENYA'S COMPREHEN-  
SIVE AND ELABORATE CONSTITUTIONAL BILL OF RIGHTS IS QUALI-  
FIED BY VARIOUS PROVISIONS GIVING RESTRICTIVE POWERS  
TO THE EXECUTIVE, IN PRACTICE THESE RESTRICTIVE POWERS HAVE  
BEEN VERY SPARINGLY EXERCISED. THE MAJOR CURRENT FLAW IN  
KENYA'S RECORD INVOLVES THE DETENTION WITHOUT TRIAL OF  
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SEVERAL POLITICAL FIGURES CRITICAL OF THE GOVERNMENT OF THE  
AGING JOMO KENYATTA.

1. RESPECT FOR THE INTEGRITY OF THE PERSON.  
THERE IS NO INDICATION THAT TORTURE, CRUEL, INHUMAN TREAT-  
MENT OR DEGRADING PUNISHMENT ARE PRACTICED IN KENYA.  
POLICE AUTHORITY IS NOT ARBITRARILY EXERCISED, NOR ARE  
POLICE TACTICS CHARACTERIZED BY BRUTALITY.

POLITICAL DETENTIONS ARE PERMITTED BY THE TERMS OF THE

PUBLIC SECURITY ACT. DETAINEES MUST BE INFORMED OF THE REASONS FOR THEIR DETENTION WITHIN FIVE DAYS OF ARREST, AND THEY HAVE THE RIGHT TO REVIEW OF THEIR CASES EVERY SIX MONTHS BY A SPECIAL TRIBUNAL, BUT THE TRIBUNAL IS APPOINTED BY THE PRESIDENT, MEETS IN CAMERA, AND ITS RECOMMENDATIONS ARE NON-BINDING. THE INCIDENCE OF POLITICALLY MOTIVATED ARRESTS UNDER THESE PROVISIONS SINCE INDEPENDENCE HAS BEEN LOW. RECENT CASES, HOWEVER, INCLUDE TWO PROMINENT DISSIDENT MEMBERS OF PARLIAMENT ARRESTED IN THE AFTERMATH OF THE MARCH 1975 MURDER OF A LEADING PARLIAMENTARY CRITIC OF THE REGIME, AND THE ARREST IN MAY OF THIS YEAR OF A VOCAL PARLIAMENTARY BACKBENCHER WHOSE TARGETS INCLUDED CORRUPTION BY HIGH ADMINISTRATION OFFICIALS. THE TOTAL CURRENT DETAINEE POPULATION IS THOUGHT TO NUMBER UNDER TEN, INCLUDING THE INDIVIDUALS REFERRED TO ABOVE.

IN DETENTION CASES, THE AUTHORITY OF THE REGULAR COURTS IS LIMITED TO ENSURING COMPLIANCE WITH CERTAIN PROCEDURAL RIGHTS; THE COURTS CANNOT QUESTION THE NECESSITY OF THE DETENTION. THE KENYAN COURT SYSTEM ITSELF, HOWEVER, HAS MAINTAINED A HIGH DEGREE OF INTEGRITY AND INDEPENDENCE, AND THE GENERALLY HIGH STANDARD OF IMPARTIALITY IN THE CONFIDENTIAL

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COURTS HAS BEEN PARALLELED BY RESPECT FOR DUE PROCESS ON THE PART OF THE ADMINISTRATIVE AUTHORITIES. THUS, FAIR AND PUBLIC HEARINGS AND TRIALS BY INDEPENDENT AND IMPARTIAL TRIBUNALS ARE FUNDAMENTALLY AVAILABLE IN KENYA.

## 2. RESPECT FOR CIVIL AND POLITICAL LIBERTIES.

FREEDOM OF EXPRESSION AND COMMUNICATION IN KENYA CAN BE RESTRICTED UNDER VARIOUS SECTIONS OF THE PENAL CODE. ALTHOUGH THERE IS NO FORMAL CENSORSHIP OF NEWS COPY, GOVERNMENT GUIDELINES ARE ISSUED ON POLITICALLY SENSITIVE TOPICS WHICH THE MEDIA USUALLY OBSERVE. THERE IS ALSO A DEGREE OF SELF-CENSORSHIP. HOWEVER, DESPITE THE GOVERNMENT'S POWERS IN THIS AREA, KENYA'S PRESS IS ACTIVE AND ASSERTIVE IN REPORTING AND COMMENTING ON INTERNAL DEVELOPMENTS.

FREEDOM OF MOVEMENT IS PROTECTED BY THE CONSTITUTION, SUBJECT TO THE EXCEPTIONS OF THE DETENTION PROVISIONS. FOREIGN TRAVEL AND EMIGRATION ARE SUBJECT TO THE SAME RESTRICTIONS.

THE FREEDOMS OF ASSEMBLY AND ASSOCIATION ARE LIMITED BY THE PUBLIC ORDER AND POLICE ACT WHICH GIVES LOCAL ADMINISTRATIVE AUTHORITIES AND POLICE WIDE POWERS TO CONTROL PUBLIC MEETINGS. IT IS AN OFFENSE NOT ONLY TO CONVENE AN UNLICENSED MEETING, BUT ALSO TO ATTEND ONE. WITH THESE POWERS, THE GOVERNMENT CAN PREVENT MEETINGS BY

POLITICAL OPPONENTS, BUT TO DATE THE ACT HAS ONLY BEEN USED IN A FEW INDIVIDUAL CASES. SIMILARLY, UNDER THE SOCIETIES ACT THE GOVERNMENT CAN REFUSE TO REGISTER ANY SOCIETY IT BELIEVES MAY PURSUE ACTIVITIES HARMFUL TO PUBLIC SECURITY. ONE FORMER OPPOSITION POLITICAL PARTY REMAINS PROSCRIBED UNDER THIS ACT, AND THE GOVERNMENT USED THE SAME POWERS TO BAN THE JEHOVAH'S WITNESSES IN 1973; IN THE LATTER CASE, HOWEVER, THE GOVERNMENT SUBSEQUENTLY REVOKED THE BAN WHEN THREATENED WITH A TEST OF ITS CONFIDENTIAL

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CONSTITUTIONALITY.

DEMOCRATIC PROCEDURES AND INSTITUTIONS RETAIN THEIR VITALITY IN KENYA, AND POLITICAL RIGHTS ARE ACTIVELY EXERCISED EVEN WITHIN WHAT IS IN PRACTICE (THOUGH NOT BY LAW) A ONE-PARTY SYSTEM. PARLIAMENTARY ELECTIONS IN 1969 AND 1974 FEATURED MANY LIVELY CONTESTS BETWEEN MULTIPLE CANDIDATES AND RESULTED IN THE DEFEAT OF A NUMBER OF INCUMBENTS.

### 3. ECONOMIC RIGHTS.

KENYA'S ECONOMIC DEVELOPMENT POLICIES, EMPHASIZING FREE ENTERPRISE AND THE PROFIT MOTIVE, HAVE PRODUCED A RECORD OF ECONOMIC GROWTH THAT IS UNUSUAL IN AFRICA. GROWTH RATES AVERAGED 7 PERCENT IN THE FIRST DECADE OF INDEPENDENCE AND NOW ARE APPROACHING THAT RATE AGAIN AFTER A DECLINE FOLLOWING THE OIL CRISIS YEAR OF 1973. PER CAPITA INCOME REMAINS IN THE RANGE OF DOLS. 200, HOWEVER, AND THE GOVERNMENT HAS DEVELOPED A NUMBER OF POLICIES RESPONDING DIRECTLY TO THE FUNDAMENTAL NEEDS OF THE POORER SEGMENTS OF THE POPULATION. THESE PROGRAMS INCLUDE BOTH REGULATORY MEASURES SUCH AS CONTROLS ON THE PRICE OF BASIC FOODSTUFFS AND DEVELOPMENT PROGRAMS AIMED AT EMPLOYMENT GENERATION IN THE URBAN AREAS AND IMPROVEMENT OF CONDITIONS FOR SMALL-HOLDERS IN THE RURAL AREAS. HEALTH CARE AND EDUCATION ARE ALSO PRIORITY AREAS FOR GOVERNMENT DEVELOPMENT SPENDING, ALTHOUGH THE QUALITY OF PERFORMANCE IN THESE SECTORS HAS VARIED.

CORRUPTION IS A PROBLEM IN KENYA, AS IS THE VISIBLE CONTRAST IN LIFE-STYLES BETWEEN THE AFFLUENT ELITE AND THE AVERAGE KENYAN. THESE CONDITIONS MAY CREATE POLITICAL PROBLEMS FOR THE KENYAN GOVERNMENT IN THE FUTURE. THE CONFIDENTIAL

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EXTENT TO WHICH CORRUPTION HAS DIVERTED RESOURCES AWAY FROM USES WHICH WOULD RAISE THE OVERALL STANDARD OF LIVING AND BENEFIT THE MAJORITY OF THE POPULATION IS, HOWEVER, NOT CLEAR. WHILE DEPLORING INDIVIDUAL CASES OF

EGREGIOUS CORRUPTION AND ACQUISITIVENESS (INCLUDING INSTANCES INVOLVING THE KENYATTA FAMILY), THE CRUCIAL INTERMEDIATE ECONOMIC GROUPS IN KENYA APPEAR GENERALLY TO CONSIDER A CERTAIN DEGREE OF DISTRIBUTIVE INEQUALITY TO BE AN ACCEPTABLE COUNTERPART OF A SYSTEM THAT ENCOURAGES INDIVIDUAL ENDEAVOR AS THE MOTIVE FORCE FOR GROWTH.

#### 4. GOVERNMENT RESPONSIBILITY.

THE KENYAN GOVERNMENT TAKES PRIDE IN THE FACT THAT THE

FUNDAMENTAL RIGHTS AND LIBERTIES OF ITS CITIZENS ARE ENUMERATED IN THE CONSTITUTION, AND IN THE EXISTENCE OF AN INDEPENDENT JUDICIARY TO PROTECT THOSE FREEDOMS. NEVERTHELESS, THE GOVERNMENT ALSO FIRMLY DEFENDS THE DETENTION PROVISIONS AND OTHER RESTRICTIVE POWERS ON THE GROUNDS THAT THE GOVERNMENT MUST BE CAPABLE OF MAINTAINING LAW, ORDER AND PUBLIC SECURITY. THE ATTORNEY GENERAL IN AN UNCOMPROMISING JANUARY 1977 SPEECH TO A FOREIGN AUDIENCE DEFENDED THESE PROVISIONS ON THE GROUNDS THAT IN A NEWLY INDEPENDENT COUNTRY FREEDOM "COULD DISAPPEAR OVERNIGHT" IN THE ABSENCE OF ADEQUATE SAFEGUARDS. THE RELATIVELY SPARING USE OF ITS RESTRICTIVE POWERS BY THE GOVERNMENT SINCE INDEPENDENCE TENDS TO SUPPORT THE SINCERITY OF THE GOVERNMENT'S STATED POSITION ON THIS SUBJECT. NEVERTHELESS, THE USE OF THE PROVISIONS IN RECENT CASES TO EFFECTIVELY SILENCE CRITICS OF THE RULING INNER CIRCLE ILLUSTRATES THE POSSIBILITY OF ABUSE INHERENT IN ANY SUCH PROVISIONS.

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#### 5. OUTSIDE INVESTIGATIONS

THE KENYAN GOVERNMENT HAS IN THE PAST BARRED ENTRY INTO KENYA BY CERTAIN JOURNALISTS WHOSE ARTICLES HAVE BEEN CRITICAL OF KENYATTA AND HIS FAMILY. HOWEVER, WE KNOW OF NO INSTANCES OF REQUESTS FROM THE MAJOR HUMAN RIGHTS ORGANIZATIONS WHICH HAVE BEEN REFUSED BY THE KENYAN GOVERNMENT. REQUESTS FOR ENTRY BY OUTSIDE GROUPS TO INVESTIGATE HUMAN RIGHTS CONDITIONS WOULD PRESUMABLY BE SUBJECT TO CLOSE SCRUTINY AND REQUESTS FOR ENTRY FOR THE EXPRESS PURPOSE OF INVESTIGATING THE DETENTION SYSTEM MIGHT ENCOUNTER DIFFICULTIES GIVEN THE GOVERNMENT'S UNCOMPROMISING STAND CONCERNING THESE PROVISIONS.

#### B. ANALYSIS AND RECOMMENDATIONS

##### 1. U.S. HUMAN RIGHTS OBJECTIVES.

OUR PRIMARY HUMAN RIGHTS OBJECTIVE IN KENYA OVER THE NEXT YEAR SHOULD BE TO SUPPORT CONTINUED KENYAN PROSPERITY, GROWTH AND SECURITY IN ORDER TO ENSURE THAT THE CONDITIONS WHICH HAVE MADE POSSIBLE KENYA'S RELATIVELY GOOD RECORD ON HUMAN RIGHTS ARE NOT UNDERMINED. THIS IDEALLY WOULD INCLUDE THE AMELIORATION OF CORRUPTION, WHICH COULD FUEL INSTABILITY AND SOME IMPROVEMENT IN THE AREA OF POLITICAL DETEN-

TIONS.

WITH THE DAY OF A KENYATTA-LESS KENYA APPROACHING RAPIDLY WE NEED TO POSITION OURSELVES TO DEAL CONSTRUCTIVELY WITH THE SUCCEEDING LEADERSHIP -- VICE PRESIDENT MOI AND OTHER CONTENDERS BEING COMPATIBLE WITH OUR INTERESTS -- TO HELP PREVENT EITHER A LURCH TO THE LEFT OR A LAPSE INTO REVIVED TRIBAL ANIMOSITIES. EITHER EVENTUALITY WOULD HAVE A DELETERIOUS EFFECT ON HUMAN RIGHTS IN KENYA.

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2. LIKELY U.S. INFLUENCE.

THE U.S. HAS INFLUENCE IN KENYA THROUGH OUR ECONOMIC AND MILITARY ASSISTANCE AND THROUGH THE GENERAL KENYAN BELIEF THAT THE U.S. IS A SYMPATHETIC FRIEND CONCERNED OVER THE PROBLEMS FACED BY KENYA IN THE REGION. THIS GIVES US GOOD ACCESS TO KENYAN LEADERS AND MAKES THEM ATTENTIVE TO OUR VIEWS, PARTICULARLY WHEN WE ARE PREPARED TO SUPPORT OUR ADVICE WITH OUR RESOURCES. IT DOES NOT, HOWEVER, AUTOMATICALLY RESULT IN OUR ADVICE BEING TAKEN, PARTICULARLY ON SUBJECTS REGARDED AS OF BASIC IMPORTANCE TO THE SURVIVAL OF THE EXISTING POLITICAL SYSTEM AND THE LEADERS THEMSELVES. THUS ALTHOUGH WE HAVE GOOD LEVERAGE IN PURSUING OUR PRIMARY OBJECTIVE, ONE WHICH KENYA'S LEADERS FULLY SHARE, AND WE HAVE SOME LEVERAGE IN ADDRESSING PROBLEMS SUCH AS CORRUPTION INsofar AS THEY IMPINGE DIRECTLY ON THE ACHIEVEMENT OF THIS OBJECTIVE, WE ONLY HAVE VERY LIMITED LEVERAGE IN DEALING WITH INTERNAL SECURITY MATTERS SUCH AS DETENTION POLICIES.

3. OPTIONS.

A. MAINTAIN -- OR INCREASE -- U.S. ASSISTANCE PROGRAMS, AS A MEANS OF ACHIEVING THE BASIC OBJECTIVE.

B. RAISE PRIVATELY WITH KENYAN LEADERS THE PROBLEMS OF CORRUPTION AND POLITICAL DETENTIONS, IN AN ATTEMPT TO STIMULATE CORRECTIVE ACTIONS.

C. INFORM THE KENYANS THAT THE IMPORTANCE OF HUMAN RIGHTS CONSIDERATIONS IN U.S. FOREIGN POLICY DECISION-MAKING IS SUCH THAT THE FUTURE OF OUR AID AND OTHER SUPPORT FOR KENYA MAY BE ENDANGERED IN THE ABSENCE OF MOVEMENT ON DETENTIONS (AND POSSIBLY CORRUPTION).

D. THREATEN PUBLIC STATEMENTS, VOTES AGAINST KENYA IN INTERNATIONAL INSTITUTIONS, ETC.

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4. EFFECTIVENESS.

OUR DOLS. 20 PLUS MILLION PER ANNUM DEVELOPMENT ASSISTANCE PROGRAM IS MAKING A DIRECT CONTRIBUTION TO MAINTAINING KENYAN GROWTH AND STABILITY WHILE ALSO DIRECTLY IMPROVING CONDITIONS FOR THE POOREST OF THE POOR. OUR MILITARY ASSISTANCE (FMS CREDIT) IS SIMILARLY ASSISTING KENYA TO MAINTAIN THE EXTERNAL SECURITY NECESSARY FOR CONTINUED DOMESTIC PROSPERITY AND ORDER. THESE INSTRUMENTS ARE CLEARLY AN EFFECTIVE MEANS OF ADVANCING THE BASIC OBJECTIVE. THE KENYAN GOVERNMENT IS ALSO AMENABLE TO OUR INVOLVEMENT IN THIS AREA, AND THERE IS BROAD INTERNATIONAL PARTICIPATION AS WELL.

INTERVENTIONS ON CORRUPTION AND, MORE IMPORTANTLY, DETENTION POLICIES PROGRESSIVELY RISK AROUSING NEGATIVE KENYAN REACTIONS. ALTHOUGH DIRECT KENYAN RETALIATION AGAINST OTHER AMERICAN INTERESTS IS UNLIKELY, STRONG INTERVENTIONS SUCH AS OPTION C AND CERTAINLY OPTION D COULD RESULT IN A COOLING OF THE OVERALL RELATIONSHIP AND THE LOSS OF ACCESS TO KENYAN LEADERS ON A VARIETY OF SUBJECTS OF MUTUAL INTEREST, INCLUDING OUR CONTINUING U.S. NAVY ACCESS TO KENYAN PORTS AND AIRPORT FACILITIES. NOR IS IT LIKELY THAT OUR PRESSURES PER SE WOULD PRODUCE AMELIORATIVE ACTION; SUCH ACTION APPEARS MORE LIKELY TO RESULT FROM DECISIONS BY THE KENYAN LEADERSHIP ON THE MERITS OF THE ISSUE. ON BALANCE, QUIET APPROACHES ON THIS SUBJECT SEEM TO OFFER THE GREATEST POSSIBILITY OF INFLUENCING THE KENYAN GOVERNMENT (AND STRENGTHENING THE HAND OF THOSE LEADERS WHO FAVOR SUCH REFORMS) WHILE MINIMIZING THE DANGERS OF A BACKLASH AFFECTING OUR BROADER RELATIONSHIP.

5. SUPPORT FOR U.S. HUMAN RIGHTS EFFORTS.  
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GIVEN THE KENYAN GOVERNMENT'S POSITION REGARDING ITS OWN SECURITY LAWS AS WELL AS ITS SOMEWHAT VULNERABLE POSITION AS A NON-ALIGNED STATE CLOSELY ASSOCIATED WITH WESTERN NATIONS (INCLUDING ISRAEL IN COMBATting TERRORISM) IT IS UNLIKELY THAT KENYA WOULD BE WILLING TO TAKE HIGHLY VISIBLE POSITIONS SUPPORTING U.S. HUMAN RIGHTS INITIATIVES.  
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